

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Intervenor,)	
)	
v.)	Case No. 4:12-CV-2676
)	
AMERICUS MORTGAGE)	
CORPORATION, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

DEFENDANTS’ MOTION TO STRIKE

Defendants Americus Mortgage Corporation (f/k/a Allied Home Mortgage Capital Corporation, hereinafter “Allied Capital”), AllQuest Mortgage Corporation (f/k/a Allied Home Mortgage Corporation, hereinafter “Allied Corporation”) , Jim C. Hodge, and Jeanne L. Stell, by their attorneys, respectfully move to strike certain assertions from the government’s Second Amended Complaint (the “Complaint”). This Motion is made in connection with, and without prejudice to a Motion to Dismiss that each defendant has also filed. The relief requested in this Motion to Strike is in addition to, and not in lieu of, the relief to which each defendant is entitled under their Motion to Dismiss.

The Complaint contains seven claims. Compl. ¶¶ 111 – 146. The First Claim asserts a violation of the False Claims Act, 31 U.S.C. §§ 3729 *et seq.* (“FCA”). The Second Claim seeks indemnity under the common law. The Third through Seventh Claims assert violations of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”), 12 U.S.C. §§ 1833a, 1006, and 1014.

The First, Second, and Third Claims are all based on loans allegedly made by “shadow branches,” or branch offices that were supposedly not properly approved by the Department of Housing and Urban Development (“HUD”). Compl. ¶¶ 112, 113, 117, 118, 122, and 125. The Fourth Claim is based upon allegedly false certifications to HUD for obtaining approval for some of Allied Capital and Allied Corporation’s branch locations. Compl. ¶¶ 127, 128. The Fifth and Sixth Claims concern allegedly “false annual certifications for 2006 and 2007” to maintain HUD approval for the continued participation of Allied Capital and Allied Corporation in the Federal Housing Administration (“FHA”) insured mortgage. Compl. ¶¶ 132, 133, 135, 138, 140, and 141. The Seventh Claim is based upon supposedly false or fraudulent reports or statements about the quality control plan of Allied Capital and Allied Corporation. Compl. ¶¶ 144.

None of these assertions states a valid claim within the meaning of Rule 12(b)(6), Fed. R. Civ. P., as is more fully explained in each defendant’s Motion to Dismiss. Additionally, many assertions in the Complaint have absolutely no bearing upon the subject matter of this litigation and are unfairly prejudicial.

The offensive assertions are contained in paragraphs 7, 11, 55 - 82, 105, 106, 108, and 109, and they concern: (a) a purported “culture of corruption” that Mr. Hodge supposedly cultivated, as well as intimidation of employees in order to silence them; (b) a purported misuse of bonds issued by Mercantile Insurance & Fidelity Company (“Mercantile”), because Mercantile was not licensed as an insurance company in any state; and (c) Mr. Hodge’s purported lies, misuse of “salary and commissions” of branch managers, and supposedly leaving branch managers unfairly exposed financially for

branch expenses. All of these assertions are “redundant, immaterial, impertinent, or scandalous” matters within the meaning of Rule 12(f), Fed. R. Civ. P.

WHEREFORE, Allied Capital, Allied Corporation, Ms. Stell and Mr. Hodge respectfully request this Court to grant this Motion to Strike.

DATE: November 21, 2012

Respectfully submitted,

Munsch Hardt Kopf & Harr, P.C.

By: _____/s/Fred Wahrlich

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CERTIFICATE OF CONFERENCE

I hereby certify that I, as counsel for Defendants, conferred with counsel for the government regarding the Motion to Strike, during a telephone conference on November 21, 2012 at approximately 11:30 am Eastern. Counsel for the government stated that the Plaintiff is *opposed* to Defendants' Motion to Strike.

/s/Bruce E. Alexander

Bruce E. Alexander
Attorney for Defendants, Allied Home
Mortgage Capital Corporation, Allied Home
Mortgage Corporation, Jeanne Stell and Jim
Hodge.

CERTIFICATE OF SERVICE

I hereby certify that, on this 21th day of November, 2012, a copy of the foregoing Motion to Strike and accompanying Memorandum in Support was served upon all parties and counsel of record through the Court's CM/ECF system.

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/s/Bruce E. Alexander

Bruce E. Alexander